

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA

WB MUSIC CORP., et al.,)	
)	
Plaintiffs,)	
)	Civil Action
v.)	No. 3:08-CV-00217-GCM
)	
FIESTA AZTECA, INC. and)	FINAL CONSENT JUDGMENT
PEDRO CESAR ANTILLAN,)	
)	
Defendants.)	

WHEREAS, the Complaint in this action was filed on May 14, 2008, and duly served on defendants Fiesta Azteca, Inc. and Pedro Cesar Santillan; and

WHEREAS, defendant Fiesta Azteca, Inc., at the time of the infringements involved in this action and at all times relevant hereto, owned and operated an establishment known as Skandalo's a/k/a Don Pedro Mexican Restaurant, located at 5317 East Independence Blvd. in Charlotte, North Carolina (the "Establishment"); and

WHEREAS, defendant Pedro Cesar Santillan, at the time of the infringements involved in this action and at all times relevant hereto, operated and managed the Establishment and was and is one of the principal shareholders and officers of defendant Fiesta Azteca, Inc.; and

WHEREAS, defendants acknowledge that they willfully infringed the copyrights in plaintiffs' compositions and the compositions of other ASCAP members by performing such compositions, on a regular basis, at the Establishment without permission; and

WHEREAS, defendants acknowledge that they had the opportunity to consult, and they have consulted, with counsel regarding the representations made herein and the obligations

created by this Final Consent Judgment, and that they have not relied upon any representations of the plaintiffs, the American Society of Composers, Authors and Publishers ("ASCAP") or any of their agents, except as expressly set forth herein; and

WHEREAS, defendant Pedro Cesar Santillan acknowledges that he is jointly and severally liable with Fiesta Azteca, Inc. for the satisfaction of the debt created by this Final Consent Judgment; and

WHEREAS, it is the intent of plaintiffs and defendants that the debt created by this Final Consent Judgment shall not be dischargeable in any bankruptcy proceeding; and

WHEREAS, defendants agree that, in any bankruptcy or other proceeding filed by or against them, or any of them, they will not seek the discharge of the debt created by this Final Consent Judgment nor will they make any argument to that effect; and

WHEREAS, the Court having hereby adopted the foregoing as findings and the parties agreeing that the Court shall enter judgment on such findings and as provided below.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Defendants are enjoined and restrained permanently from publicly performing any or all of the plaintiffs' and all other ASCAP members' copyrighted musical compositions and from causing or permitting such copyrighted musical compositions to be performed publicly at their Establishment, or at any other restaurant, nightclub, or other establishment owned, operated or conducted in whole or in part by any of defendants or any related business entity, and from aiding and abetting public performances of such copyrighted musical compositions, unless defendants previously shall have obtained permission for such performances either directly from the copyright owners or by license from ASCAP.

2. Judgment is hereby entered against defendants Fiesta Azteca, Inc. and Pedro Cesar Santillan, jointly and severally, in the sum of \$55,000.00; provided, however, that this judgment may be satisfied by defendants upon timely payment of \$35,000.00 to ASCAP, on behalf of plaintiffs, in the following manner: (a) payment of \$10,000 (by cashier's check or other certified funds made payable to ASCAP) to be made on or before April 1, 2009; and (b) five equal consecutive monthly payments of \$5,000 each (by cashier's check or other certified funds made payable to ASCAP) on the first day of each month commencing on May 1, 2009. Defendants shall make all payments due pursuant to this paragraph by delivery of certified or cashier's checks to ASCAP, care of its counsel, Michael J. Allen, Carruthers & Roth, P.A., P.O. Box 540, Greensboro, NC 27402, so they arrive on or before the dates specified above.

3. Upon execution of this Final Consent Judgment, ASCAP shall offer to defendants, and defendants agree to accept, execute and comply with all of the terms of, a "General License Agreement – Restaurants, Bars, Nightclubs and Similar Establishments" for the Establishment commencing January 1, 2009. Likewise, defendant Pedro Cesar Santillan and the corporate owner of each of the four establishments known as Azteca Mexican Restaurant (Matthews, NC), Azteca Mexican Restaurant (116 East Woodlawn Road, Charlotte, NC), Don Pedro Mexican Restaurant (Pineville, NC), and Azteca Mexican Restaurant (Smith Corners), shall accept, execute and comply with all of the terms of a "General License Agreement – Restaurants, Bars, Nightclubs and Similar Establishments" for each of such establishments commencing January 1, 2009. If all payments are timely made by defendants under this Final Consent Judgment, the fees for said licenses through December 31, 2009 will be included in the amount of this Final Consent Judgment only up to the following maximum amounts for the

establishments: Don Pedro Mexican Restaurant/Skandalo's -- \$3,923.59; Azteca Mexican Restaurant (Matthews, NC) -- \$1,761.70; Azteca Mexican Restaurant (116 East Woodlawn Road, Charlotte) -- \$1,443.13; Don Pedro Mexican Restaurant (Pineville, NC) -- \$1,547.61; and Azteca Mexican Restaurant (Smith Corners) -- \$669.00. Such amounts of license fees shall not be deemed paid unless and until all payments referenced in Paragraph 2 above are made. The fees due under any License Agreement for the Establishment and the other establishments referenced herein from January 1, 2010 forward are **not** included in the amount due under this Final Consent Judgment under any circumstances. The amount of this Final Consent Judgment does not, under any circumstances, include license fees or damages as to any establishment owned or operated by either of the defendants that is not expressly mentioned herein.

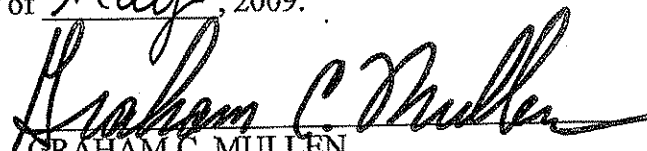
4. Plaintiffs agree not to execute on this Final Consent Judgment so long as defendants are not in default of any of their obligations under this Final Consent Judgment. Defendants' failure to comply with any of the provisions of Paragraphs 1, 2, 3 or 5 of this Final Consent Judgment shall serve automatically and immediately to entitle plaintiffs to have execution issued on this judgment forthwith, for the sum of \$55,000.00 less any principal payment(s) made pursuant to Paragraph 2 above. Provided, however, that to the extent that the default is based on defendants' failure to timely make a payment under Paragraph 2 above, then as to the first such default defendants will have five (5) days within which to cure the default after plaintiffs' provision of written notice of said default to the defendants' counsel.

5. If any of the defendants shall apply or file for bankruptcy or receivership, prior to the payment of all sums due hereunder, defendants shall so notify ASCAP immediately. In the event of such application or filing, all sums owed hereunder shall become immediately due and

payable and shall be paid to ASCAP within five calendar days of the date on which ASCAP is notified of such application or filing. Failure to pay the entire outstanding balance within five days of such notification, or failure to notify ASCAP of such application or filing, shall constitute a default hereunder, in which case plaintiffs may commence with execution proceedings as set forth in Paragraph 4 above.

5. Any notice to defendants hereunder shall be sent, by regular mail, to the following address: Jonathon D. Spence, Esq. Adams Intellectual Property Law, P.A., Suite 2350, Charlotte Plaza, 201 South College Street, Charlotte, North Carolina 28244. Notice to plaintiffs hereunder shall be sent, by regular mail, to Michael J. Allen, Carruthers & Roth, P.A., P.O. Box 540, Greensboro, NC 27402.

IT IS SO ORDERED this 6th day of May, 2009.


GRAHAM C. MULLEN
UNITED STATES DISTRICT JUDGE

We have read, understand and consent to the entry of the foregoing Final Consent Judgment against defendants Fiesta Azteca, Inc. and Pedro Cesar Santillan.

DATED: March 31, 2009

/s/ Michael J. Allen
Michael J. Allen
CARRUTHERS & ROTH, P.A.
Post Office Box 540
Greensboro, North Carolina 27402
(336) 379-8651
Attorneys for Plaintiffs
N.C. State Bar No. 18030
mja@crlaw.com

DATED: March 31, 2009

Fiesta Azteca, Inc.

[Signature]
By: President

[Signature]
Pedro Cesar Santillan

/s/ Jonathan P. Spence
Jonathan P. Spence
N.C. State Bar No. 28093
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